

By: Vasut

H.B. No. 4125

A BILL TO BE ENTITLED

AN ACT

relating to state and local government responses to disasters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 418.004, Government Code, is amended by amending Subdivisions (1) and (3) and adding Subdivisions (3-a) and (3-b) to read as follows:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic emergency, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat or cold, cybersecurity event, [~~other public calamity requiring emergency action~~], or energy emergency.

(3) "Energy emergency" means a temporary statewide, regional, or local shortage of petroleum, natural gas, or liquid fuel energy supplies or electricity generation that makes emergency measures necessary to reduce demand or allocate supply.

(3-a) "Epidemic emergency" means the occurrence or imminent threat of an outbreak of a communicable disease in this state that threatens widespread or severe damage, injury, or loss of life or property in this state resulting from any natural or man-made cause related to the outbreak. An epidemic emergency does

1 not mean the occurrence or imminent threat of an outbreak of an
2 communicable disease for which there is widespread availability of
3 an effective vaccine against infection.

4 (3-b) "Communicable disease" has the meaning assigned by
5 Section 81.003, Health and Safety Code.

6 SECTION 2. Section 418.006, Government Code, is amended
7 to read as follows:

8 Sec. 418.006. CIVIL LIABILITY.

9 (a) An officer or employee of a state or local agency, or a
10 volunteer acting at the direction of an officer or employee of a
11 state or local agency, is considered for purposes of Section
12 [437.222](#) to be a member of the Texas military forces ordered into
13 active service of the state by proper authority and is considered
14 to be discharging a duty in that capacity if the person is
15 performing an activity related to sheltering or housing
16 individuals in connection with the evacuation of an area stricken
17 or threatened by disaster.

18 (b) A business or an entity operating during a disaster for
19 an epidemic emergency is not liable for an injury caused by
20 exposing or potentially exposing an individual to a disease if on
21 the date of the exposure or potential exposure:

22 (1) the business or entity is authorized to do business
23 in this state; and

24 (2) the act or omission giving rise to the exposure or
25 potential exposure was not wilful, reckless, or grossly negligent.

26 (c) A person who provides goods or renders services during
27 a disaster in support of disaster response efforts and at the

1 request of the governor or the governor's designee is not liable
2 for an injury caused by the goods or services, regardless of the
3 circumstances, so long as the act or omission giving rise to the
4 injury was not wilful, reckless, grossly negligent, or
5 inconsistent with a limit specified in the governor's request.

6 SECTION 3. Subchapter A, Chapter 418, Government Code, is
7 amended by adding Section 418.007 to read as follows:

8 Sec. 418.007. JUDICIAL REVIEW OF DISASTER ORDER. (a) A
9 person has standing to file suit in a court of this state to
10 challenge a provision of an order issued by the governor or the
11 presiding officer of the governing body of a political subdivision
12 that relates to a declared state of disaster if the provision in
13 the order is alleged to cause injury to the person or burden a
14 right of the person that is protected by the state or federal
15 constitution or by a state or federal law.

16 (b) The issuer of the order has the burden of proving the
17 challenged provision in the order:

18 (1) mitigates a threat to the public caused by the
19 disaster; and

20 (2) is the least restrictive means of mitigating the
21 threat.

22 (c) The court shall enter a judgment invalidating the
23 challenged provision in the order if the court finds the issuer of
24 the order has not satisfied the burden imposed under Subsection
25 (b).

26 SECTION 4. Section 418.012, Government Code, is amended
27 to read as follows:

1 Sec. 418.012. EXECUTIVE ORDERS.

2 (a) The [Under this chapter, the] governor and the presiding
3 officer of a political subdivision may issue executive orders,
4 proclamations, and regulations consistent with the provisions of
5 this chapter and amend or rescind them. [~~Executive orders,~~
6 ~~proclamations, and regulations have the force and effect of law.~~]

7 (b) In the event of a conflict between executive orders,
8 proclamations, or regulations enacted pursuant to this chapter by
9 the governor and a presiding officer of a political subdivision,
10 an executive order, proclamation, or regulation enacted by the
11 governor controls.

12 (c) Unless expressly authorized by statute, the governor and
13 the president officer of a governing body of a political
14 subdivision may not issue an executive order, proclamation, or
15 regulation that:

16 (1) requires a person other than a public employee or
17 licensed professional providing medical services to wear a mask or
18 personal protective equipment during a declared state of disaster;

19 (2) prohibits or limits a person from attending or
20 participating in a religious service or activity;

21 (3) violates Chapter 110, Civil Practice and Remedies
22 Code or the Religious Freedom Restoration Act of 1993 (42 U.S.C.
23 2000bb et seq.);

24 (4) prohibits or limits the sale, dispensing, or
25 transportation of firearms or ammunition;

26 (5) alters any voting standard, practice, or procedure;
27 or

1 (6) restricts the otherwise lawful operation of a
2 business or industry or the activities of an individual by
3 distinguishing between essential and nonessential services
4 provided or obtained by the business, industry, or individual.

5 SECTION 5. Subchapter B, Chapter 418, Government Code, is
6 amended by adding Section 418.0125 to read as follows:

7 Sec. 418.0125. LIMIT ON ASSESSMENT OF FEES. (a) If the
8 governor issues an executive order, proclamation, or regulation
9 during a declared state of disaster that restricts the operation
10 of a business or nonprofit entity or a category of businesses, a
11 business or nonprofit entity whose operation is restricted by the
12 order, proclamation, or regulation may not be assessed any fee,
13 including a licensing fee, by this state during the time the
14 operation of the business or nonprofit entity is restricted by the
15 order, proclamation, or regulation.

16 (b) If a business or nonprofit entity paid an annual fee or
17 other fee in advance to this state for the business's or nonprofit
18 entity's operations, the business or nonprofit entity is entitled
19 to a pro rata refund of the fee for the period of time its
20 operations were restricted by an executive order, proclamation, or
21 regulation of the governor described by Subsection (a).

22 (c) A business or nonprofit entity may opt to have the amount
23 of any refund due under this section credited toward a future fee
24 requirement.

25 SECTION 6. Section 418.014, Government Code, is amended
26 by amending Subsection (c) and adding Subsection (c-1) to read as
27 follows:

1 (c) A state of disaster may not continue for more than 30
2 days unless renewed by the governor. A state of disaster for an
3 epidemic emergency, energy emergency, or any man-made cause
4 affecting more than half the counties of this state may not
5 continue for more than 60 days unless renewed by the legislature.
6 In no case may a state of disaster continue for longer than 180
7 days unless renewed by the legislature. The legislature [~~by law~~]
8 may terminate a state of disaster at any time. On termination by
9 the legislature, the governor shall issue an executive order ending
10 the state of disaster.

11 (c-1) The governor may not declare a state of disaster based
12 on the same or a substantially similar finding for which a state
13 of disaster was declared under Subsection (a) by the governor
14 within the preceding 12 months.

15 SECTION 7. Section 418.0155, Government Code, is amended
16 to read as follows:

17 Sec. 418.0155. SUSPENSION LIST. (a) The governor's office,
18 using existing resources, shall compile and maintain a
19 comprehensive list of state agency [~~regulatory statutes and~~] rules
20 that may require suspension during a disaster.

21 (b) On request by the governor's office, a state agency that
22 would be impacted by the suspension of a [~~statute or~~] rule on the
23 list compiled under Subsection (a) shall review the list for
24 accuracy and shall advise the governor's office regarding any
25 [~~statutes or~~] rules that should be added to the list.

26 SECTION 8. Section 418.016, Government Code, is amended
27 by amending Subsections (a) and (e) and adding Subsection (a-1) to

1 read as follows:

2 Sec. 418.016. SUSPENSION OF CERTAIN [~~LAWS AND~~] RULES AND
3 REQUIREMENTS; APPLICATION OF CERTAIN CONTRACTING REQUIREMENTS.

4 (a) The governor may not suspend a state agency order or rule
5 except as specifically authorized by this chapter. The governor
6 may suspend [~~the provisions of any regulatory statute prescribing~~
7 ~~the procedures for conduct of state business or~~] the orders or
8 rules of a state agency if strict compliance with the [~~provisions,~~]
9 orders[~~7~~] or rules would in any way prevent, hinder, or delay
10 necessary action or prompt response in coping with a disaster.

11 (a-1) During a state of disaster declared by the governor and
12 notwithstanding any other law, the contracting requirements in
13 Subtitle D, Title 10, that inhibit or prevent prompt response to
14 a disaster do not apply to a state agency in contracting for goods
15 or services related to the declared state of disaster.

16 (e) On request of a political subdivision, the governor may
17 waive or suspend a deadline imposed by [~~a statute or~~] the orders
18 or rules of a state agency on the political subdivision, including
19 a deadline relating to a budget or ad valorem tax, if the waiver
20 or suspension is reasonably necessary to cope with a disaster.

21 SECTION 9. Section 418.019, Government Code, is repealed.

22 SECTION 10. Section 418.020, Government Code, is amended
23 by amending Subsection (c) to read as follows:

24 (c) Under regulations prescribed by the governor, the
25 governor may temporarily suspend or modify for a period of not
26 more than 60 days any public health, safety, zoning, intrastate
27 transportation, or other [~~law or~~] regulation if by proclamation

1 the governor considers the suspension or modification essential to
2 provide temporary housing or emergency shelter for disaster
3 victims.

4 SECTION 11. Section 418.042, Government Code, is amended
5 by amending Subsection (c) to read as follows:

6 (c) All or part of the state emergency management plan may be
7 incorporated into regulations of the division or executive orders
8 ~~[that have the force and effect of law]~~.

9 SECTION 12. Subchapter E, Chapter 418, Government Code, is
10 amended by adding Section 418.1081 to read as follows:

11 Sec. 418.1081. LIMIT ON ASSESSMENT OF FEES DURING DECLARED
12 LOCAL DISASTER. (a) If the presiding officer of the governing
13 body of a political subdivision issues an order or proclamation
14 during a declared local state of disaster that restricts the
15 operation of a business or nonprofit entity or a category of
16 businesses, a business or nonprofit entity whose operation is
17 restricted by the order or proclamation may not be assessed any
18 fee, including a permit fee, by the political subdivision during
19 the time the operation of the business or nonprofit entity is
20 restricted by the order or proclamation.

21 (b) If a business or nonprofit entity paid an annual fee or
22 other fee in advance to a political subdivision for the business's
23 or nonprofit entity's operations, the business or nonprofit entity
24 is entitled to a pro rata refund of the fee for the period of time
25 its operations were restricted by an order or proclamation of the
26 political subdivision described by Subsection (a).

27 (c) A business or nonprofit entity may opt to have the amount

1 of any refund due under this section credited toward a future fee
2 requirement.

3 SECTION 13. Section 418.173, Government Code, is amended
4 to read as follows:

5 Sec. 418.173. PENALTY FOR VIOLATION OF EMERGENCY MANAGEMENT
6 PLAN. (a) A state, local, or interjurisdictional emergency
7 management plan may provide that the intentional or knowing
8 violation of a state, local, or interjurisdictional emergency
9 management plan [~~failure to comply with the plan~~] or [~~with~~] a rule,
10 order, or ordinance adopted under the plan is an offense.

11 (b) The plan may prescribe a fine-only punishment for the
12 offense in an amount that does not exceed \$500.00 [~~but may not~~
13 ~~prescribe a fine that exceeds \$1,000 or confinement in jail for a~~
14 ~~term that exceeds 180 days~~].

15 SECTION 14. Section 433.001, Government Code, is amended
16 to read as follows:

17 Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. On
18 application of the chief executive officer or governing body of a
19 county or municipality during an emergency, the governor may
20 proclaim a state of emergency and designate the area involved.
21 For the purposes of this section an emergency exists in the
22 following situations:

23 (1) a riot or unlawful assembly by three or more persons
24 acting together by use of force or violence;

25 (2) if a clear and present danger of the use of violence
26 exists; or

27 (3) a natural or man-made disaster for which a state of

1 disaster has not been declared by the governor pursuant to Chapter
2 418.

3 SECTION 15. Section 433.002, Government Code, is amended
4 by amending Subsection (b) to read as follows:

5 (b) The directive may provide for:

6 (1) control of public and private transportation in the
7 affected area;

8 (2) designation of specific zones in the affected area
9 in which, if necessary, the use and occupancy of buildings and
10 vehicles may be controlled;

11 (3) control of the movement of persons;

12 (4) control of places of amusement or assembly; and

13 (5) establishment of curfews[+]

14 ~~(6) [control of the sale, transportation, and use of~~
15 ~~alcoholic beverages, weapons, and ammunition, except as provided~~
16 ~~by Section [433.0045](#); and~~

17 ~~(7) control of the storage, use, and transportation of~~
18 ~~explosives or flammable materials considered dangerous to public~~
19 ~~safety].~~

20 SECTION 16. Section 81.082, Health and Safety Code, is amended
21 by amending Subsection (d) to read as follows:

22 (d) A declaration of a public health disaster may continue
23 for not more than 30 days unless renewed by the legislature. [A
24 ~~public health disaster may be renewed one time by the commissioner~~
25 ~~for an additional 30 days.~~]

26 SECTION 17. Section 51.408, Occupations Code, is amended
27 by amending Subsection (b) to read as follows:

1 (b) An emergency license issued under this section expires
2 on the date indicated by the executive director, but not later
3 than the 90th day after the date the license is issued. If the
4 governor declares a [~~an extended~~] state of disaster that is renewed
5 under Section 418.014, Government Code, the executive director may
6 extend the term of an emergency license to an expiration date after
7 the 90th day after the date the license was issued.

8 SECTION 18. Subsections 418.006(b-c), Government Code,
9 added by this Act, apply only to a cause of action that accrued on
10 or after March 13, 2020. A cause of action that accrued before
11 March 13, 2020, is governed by the law applicable to the cause of
12 action immediately before the effective date of this Act, and that
13 law is continued in effect for that purpose.

14 SECTION 19. This Act takes effect immediately if it
15 receives a vote of two-thirds of all the members elected to each
16 house, as provided by Section 39, Article III, Texas Constitution.
17 If this Act does not receive the vote necessary for immediate
18 effect, this Act takes effect September 1, 2021.